IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2846 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PADMAVATI TUBES

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 2846 of 2004

MR PARESH M DAVE for Petitioner No. 1-3

MS DHARMISHTA RAVAL for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 06/05/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

What is challenged in this petition under Article 226 of the Constitution is the order dated 8.7.2003

passed by the Customs, Excise & Service Tax Appellate Tribunal, Mumbai in Stay Application Nos. 575, 576 and 577 of 2003 (Annexure "O") and the subsequent order dated 7.1.2004 (Annexure "Q") of the Tribunal rejecting the petitioners' Misc. Application for modification of the order dated 8.7.2003.

2. By the order dated 8.7.2003, the Tribunal has required the petitioners to make a pre-deposit of Rs.10 lakhs towards excise duty and deposit of Rs.1 lakh towards penalty imposed on the partner of petitioner No.1-firm as against the duty demand of Rs.29,23,187/and penalty of equal amount.

3. What is contended by the learned counsel for the petitioners is that the Commissioner of Central Excise had passed the order-in-original dated 27.8.2002 in violation of the principles of natural justice and, therefore, the Tribunal ought to have waived deposit of the entire amounts of duty and penalty.

4. Mr Paresh M Dave, learned counsel for the petitioners has submitted that the petitioners do not press this petition in so far as the quantum of pre-deposit is concerned, but in view of the extreme financial hardship of the petitioners, the petitioners need longer time to deposit the amounts required to be deposited as per the Tribunal's orders. It is submitted that petitioner No.1-firm is not in a position to run the business at present and, therefore, the petitioners will have to make arrangements for depositing the amounts as directed by the Tribunal.

5. In view of the above, in the peculiar facts and circumstances of the case, we dispose of this petition with a direction that if the petitioners file an undertaking within one week from today that the amounts required to be deposited as per the Tribunal's order shall be deposited in 22 equal monthly instalments of Rs.50,000/- each, the respondents shall not make any coercive recovery on the basis of the order-in-original No.29/MP/2002 dated 27.8.2002 passed by the Commissioner of Central Excise & Customs, Surat. The first instalment shall be paid by 1.6.2004 and the subsequent instalments shall be paid on the first date of the respective months. In case, the petitioners commit default in payment of any two instalments, this order shall cease to operate and the orders passed by the Tribunal dated 8.7.2003 and 7.1.2004 shall be effective.

After the amounts of Rs.10 lakhs towards duty and

Rs.1 lakhs towards penalty are deposited as aforesaid, the Tribunal shall hear and decide the appeals on merits. It is clarified that the petitioners are not exempted from any liability to pay interest on account of the delayed payments as and when the Tribunal ultimately decides the petitioners' appeals.

6. Before parting with the matter, we would like to observe that since, as we are informed by the learned counsel for the petitioners, the hearing of the appeals before the Tribunals ordinarily takes anywhere from 3 to 6 years, the Customs, Excise and Service Appellate Tribunal may consider whether in the facts and circumstances of a given case when certain amounts are directed to be deposited as a condition precedent for grant of interim stay against coercive recovery and for hearing of the appeals and even if the case of the applicants for financial hardship is not accepted in its entirety, it may be worthwhile considering whether the interests of justice would be served by granting suitable instalments to the applicants so that such applicants do not have to approach this Court merely in order to obtain instalments for payment of duty and/or penalty.

We make it clear that the grant of instalments in the facts of the present case is on account of the peculiar facts and circumstances of this case. What should be the number of instalments or what should be the amount of instalments are matters which the Tribunal would determine after considering the facts and circumstances of each case.

7. The petition stands disposed of in terms of the aforesaid directions and observations.

A writ of this Court shall be sent to respondent No.2-Tribunal and the Registrar of the Tribunal shall bring the same to the notice of all the Benches of the Tribunal.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-